

## **COUNCIL ON DEVELOPMENT FINANCE**

**May 29, 2013**

### **PUBLIC HEARING 395**

#### **THOSE PRESENT:**

Mr. Andy Lubin, Chairperson  
Cleon Cauley, Esquire  
Honorable Nancy Cook  
Mr. Fred Sears  
Mr. Jack Riddle  
Mr. Richard Rowland

Director Alan Levin  
Mrs. Rachael Mears  
Ms. Cassie Robbins  
Mrs. Lee Porter  
Mr. Jimmy Pennewell  
Mrs. Bernice Whaley  
Mrs. Barb DeHaven  
Mrs. Melody Booker  
Mr. Tim McLaughlin  
Mr. Peter Bothum

**ALSO PRESENT:** **Natural Dairy Products Corp.** – Ms. Dawn Fenstermacher, Mr. Edward MacArthur and Ms. Stephanie McVaugh; **Seaford Car Wash, LLC d/b/a Duck In Car Wash** – Mr. Garrett Grier, Ms. Margo Reign and Mr. Kyle Jackson; **Pabian Ventures, LLC** – Mr. Edward Pabian, Mr. Jason Mellinger and Ms. Janet Dougherty with Fulton Bank; **Route 113 Associates, LLC** – Mr. Tim Jones; Mr. Adam Damin, OMB; and Ms. Melinda McGuigan, EDIS

**LOCATION:** Buena Vista, 661 South DuPont Highway, New Castle, Delaware 19720

**TIME:** 9:00 A.M.

#### **CALL TO ORDER**

The meeting was called to order at 9:00 A.M. by Chairman Lubin, on Monday, May 29, 2013.

#### **OLD BUSINESS:**

Mr. Sears made a motion that the minutes of the April 29, 2013 Council on Development Finance meeting be approved as presented. Mr. Riddle seconded the motion which was then adopted by unanimous vote.

#### **NEW BUSINESS:**

**Natural Dairy Products Corp. (“NDP” or the “Applicant”):** The Applicant is requesting a performance grant in an amount not to exceed \$140,169 and a capital expenditure matching grant in an amount not to exceed \$134,831 from the Delaware

Strategic Fund. The Applicant proposes to use the funds to relocate and expand its operations to Newark, Delaware (the "Project").

Mrs. DeHaven presented this request to the Council. She stated that NDP is coming to Delaware to set up a dairy processing facility. She stated it is a good company looking to grow and the requested financial assistance would help NDP with its efforts.

Mr. MacArthur stated that NDP has decided to establish its own processing and packaging facility and has found a facility in Newark, Delaware. He stated that this will entirely replace the facility they have been working out of since 1996. He added that this new facility will allow them to put a lot of their products under one roof. He stated that butter is currently being made in Chambersville, Pennsylvania and Ohio; the summer cream in Pittsburgh.

Mr. MacArthur stated that NDP has been in business since 1995. NDP currently buys from 22 dairy farms from Lancaster and Berks County. He stated that milk will be transported from those farms to this new facility and products will be produced here. He added that it is a well designed plant, modern, wonderful flow, and they have received good feedback on the design. Mr. MacArthur stated they are well into the construction and hope to start running the facility in mid July. He stated that they will have a short transition process but hope to have everything finalized by the first of September.

Mr. Sears asked about the employees. Mr. MacArthur stated that they will be bringing ten employees and hiring at least 16 new hires – 19 within two years. The Applicant will be required to create nineteen (19) new jobs before December 31, 2015. He stated that one of the things they are learning is that the two states have different requirements. He stated that there will be some unskilled and several skilled employees.

Mr. Cauley asked if Mr. MacArthur would be staying on with the business. Mr. MacArthur stated he would be staying on. Director Levin asked about the distribution network – where do the major sales go? Mr. MacArthur stated that the fluid milk is fresh and sells within 17 days and goes to various places such as Richmond, Virginia, West Chester County and they actually have a market in Florida. He added that in terms of butter, ricotta cheeses and whipped cream products which are made in North Carolina - those are nationally distributed. Fluid milk is regional, but there is an opportunity to grow. He stated that they have had to pass up a lot of opportunities because they did not have enough capacity. He stated that they have several distributors so they don't have a problem getting their product to market. He stated that he also believes that they won't have a problem getting more customers as they grow.

Mr. Sears asked about competition. Mr. MacArthur stated that there was heavy competition but what set them apart was that they always stayed fresh. Their biggest competitors are Horizon and Organic Valley in Wisconsin.

Mr. Riddle asked about the current legislation in Pennsylvania. Mr. MacArthur stated that Pennsylvania has a Milk Marketing Board which is an independent marketing board that has the power to enforce what's known as over ordering premium. He stated this would be a hardship on NDP. Mr. MacArthur stated that this will not apply to NDP as they are moving to Delaware; all of the milk will be going to Delaware not to Pennsylvania.

Chairman Lubin asked if there were any public comments; there were none.

**Motion Made By: Mr. Sears**

**Seconded By: Mr. Cauley**

**TO:** Recommend a Performance grant in an amount not to exceed One Hundred Forty Thousand One Hundred Sixty-Nine Dollars (\$140,169) for the creation of nineteen (19) new jobs and a Capital Expenditures grant in an amount not to exceed One Hundred Thirty-Four Thousand Eight Hundred Thirty-One Dollars (134,831), such proceeds being used for the relocation and expansion of its operations to Newark, Delaware.

**Approved by Vote of 6 to 0.**

**Seaford Car Wash, LLC d/b/a Duck In Car Wash (“Duck In” or the “Applicant”):**

The Applicant is requesting a participation loan in the amount of \$490,000 from the State Small Business Credit Initiative Loan Program in conjunction with Artisans Bank. The Applicant proposes to use the funds for the purchase of the land and construction of the Seaford Car Wash at 22755 Sussex Highway in Seaford (the “Project”).

Mrs. Booker presented this request to the Council. She stated that Mr. Grier has successfully owned and operated the Milford Car Wash d/b/a Duck In Car Wash operation. She complimented his talent and his professionalism and credited his success to his diligence. There are currently twenty-seven full time and ten part time employees. She stated that Mr. Grier hopes to mirror the Seaford facility after the Milford operation with twenty-five employees.

Mr. Grier stated that while he was going to ELON College in North Carolina, he worked part time at a car wash. He added that at that time he knew he wanted to own a car wash business of his own so he talked to the owner getting facts on how to get started. He stated that in 2003 he didn't have the funds to open a business so he worked two years in North Carolina, saving money so he could come back to Milford to start his own business. He has worked with Margo Reign and WEDCO. Mr. Grier stated that one year later, he opened his car wash in Milford. He stated that the business struggled in 2008 but has since then been better and 2012 was the best year for the business; up 16 percent. He stated that as far as this year, they are even at this point. He stated that they currently have twenty-seven employees.

Mr. Grier introduced Kyle Jackson as the Manager of the operations and that Kyle has been there since 2006. Mr. Grier stated that he feels the key to success is good help. He stated his business is based on everyone taking pride in their work. He added that he hopes to find that caliber of people in Seaford. He stated that the Seaford location is on the highway. He stated that they did a business plan of doing \$35,000 a year in Seaford. He stated they have a conservative business plan.

Mr. Lubin asked about the timing aspect of doing the SSBCI – when would DEDO get its money back? Mrs. Mears stated that DEDO will close simultaneously as the debenture; anticipating six to eight months. Mr. Riddle asked if they had an approval from the SBA. Ms. Reign stated that sewer needs to be run under Route 13 and that they did not anticipate that being completed until the end of August so they will probably close at the end of September.

Mr. Rowland asked if the contract for the sewer had been awarded. Mrs. Reign stated she was not sure, but knew it was down to two contractors. She added that they were given a time line with construction being done by end of August. Mr. Riddle stated the Project was at a good location.

Mr. Sears asked about competition. Mr. Grier stated that there are two automatic car washes, but not the conveyor type. He stated his focus is on quality.

Mr. Lubin asked about the estimates showing Seaford in comparison with Milford, but showing no interest expense. Mr. Grier stated that Milford's debt service is \$9,900 and Seaford's should be around \$10,200. Mrs. Mears stated that they were factoring out certain expenses.

Chairman Lubin asked if there were any public comments; there were none.

**Motion Made By: Mr. Riddle**

**Seconded By: Senator Cook**

**TO:** Recommend a participation loan in an amount not to exceed Four Hundred Ninety Thousand Dollars (\$490,000) from the State Small Business Credit Initiative Loan Program in conjunction with Artisans Bank, such proceeds being used for the purchase of land and construction of the Seaford Car Wash in Seaford, Delaware.

**Approved by Vote of 6 to 0.**

**Pabian Ventures, LLC (“Pabian” or the “Applicant”):** The Applicant is requesting a participation loan in the amount of Eighty-Seven Thousand Five Hundred Dollars (\$87,500) from the State Small Business Credit Initiative Loan Program in conjunction with Fulton Bank, NA. The Applicant proposes to use the funds to outfit and purchase

equipment and furniture for a new Middletown, Delaware satellite office, in addition to expanding its current facility located in Wilmington, Delaware (the “Project”).

Mr. McLaughlin presented this request to the Council. He stated that DEDO recommends approval of this request. He added that it was a team effort between DEDO and Fulton Bank.

Mr. Pabian stated that the company owns rental properties and has contracts with Lowes, Sears and a high end builder. He stated that the company is looking to expand its current facility in Wilmington. They currently employ twenty-eight and intend to expand by eight to twelve individuals within the next twelve months.

Mr. Pabian stated that he and his wife started buying rental properties in 2001, in 2008 they bought some commercial properties and then in 2009 they expanded to the management of properties for others. He stated that they are a general contractor. Mr. Pabian stated that between 2009 and 2010, they have taken on about 600 properties to manage for others and have about 200 of their own.

Mr. Pabian stated that they have worked with DEDO – the Kauffman Fast Track Program - and this program has helped them with their accounting. He stated the business is more profitable now because in September 2012, they started looking at the business differently. One example was that they built a warehouse to stock supplies instead of running out to pick up supplies piece by piece. He stated that they are targeting Kent County.

Mr. Riddle and Mr. Lubin had some concerns about the financials and DEDO’s portion of the loan. Mrs. Mears stated that staff had reviewed the Project on a global prospective which made it a much healthier project. Mr. Lubin asked if there was “global” security and Mrs. Mears stated that there would be.

Chairman Lubin asked if there were any public comments; there were none.

**Motion Made By: Mr. Sears**

**Seconded By: Mr. Rowland**

**TO:** Recommend a participation loan in an amount not to exceed Eighty-Seven Thousand Five Hundred Dollars (\$87,500) from the State Small Business Credit Initiative Loan Program in conjunction with Fulton Bank, such proceeds being used to outfit and purchase equipment and furniture for a new Middletown, Delaware satellite office, in addition to expanding its current facility located in Wilmington, Delaware.

**Approved by Vote of 6 to 0.**

**Kraft Foods Group, Inc. (“Kraft” or the “Applicant”)**: In June 2012, the Applicant received approval for a grant from the Delaware Strategic Fund in an amount not to exceed \$456,000. The Applicant proposes to use the funds for the purchase and installation of new packaging equipment for its facility located in Dover, Delaware. Kraft is requesting a modification to the existing Grant Agreement (the “Modification”).

Mrs. Mears presented this request to the Council. She stated that in relocating the production of Regular Unsweetened Kool Aid from another Kraft Foods plant to its plant in Dover, Kraft was required to reach a certain goal by a certain date. However, there were delays in the move. Therefore, Kraft is requesting that the Grant Agreement be modified to reflect a new date of September 30, 2013, to allow Kraft to meet the requirements of the Grant Agreement. Mrs. Mears stated that the claw back language would reflect the new date.

Chairman Lubin asked if there were any public comments; there were none.

**Motion Made By: Senator Cook**

**Seconded By: Mr. Cauley**

**TO:** Recommend to approve the extension of the original approval date of June 2012 through September 30, 2013 of a grant from the Delaware Strategic Fund in an amount not to exceed Four Hundred Fifty-Six Thousand Dollars (\$456,000) with such funds being used for the purchase and installation of new packaging equipment for Kraft’s facility located in Dover, Delaware.

**Approved by Vote of 6 to 0.**

**Route 113 Associates, LLC (“Route 113” or the “Applicant”)**: The Applicant received a Brownfield grant in January 2010. Per the Grant Agreement, Route 113 was required to hire five employees prior to January 26, 2012. Route 113 is currently in default of the Grant Agreement with DEDA for \$63,212 due to lack of employment.

Mr. Rowland recused himself from action on this Project due to a conflict of interest.

Ms. Robbins presented this request to the Council. She stated that Route 113 has submitted additional information, including financial information, for its cure report to prevent a claw back event. She stated at this time, this Project has been removed from the Attorney General’s Office for action.

Mr. Jones, with the Commonwealth Group that owns Route 113 Associates, stated that they are working on locating a hotel at this site. He stated the hotel is scheduled to be open by May 2014.

Ms. Robbins stated that there has been a discussion on an option to waive the required five required jobs if the hotel does open. Mr. Jones stated that it is scheduled to be open by May 2014. Ms. Robbins further stated that if the hotel is not up and running, DEDO would expect Route 113 to repay the entire grant funds.

It was stated that the cleanup on this Brownfield site has been done.

Mr. Riddle asked about the debt liabilities of \$3,000,000 which is a loan on the property. Mr. Jones stated that that was correct but the entity has no income. Mr. Riddle asked if Mr. Jones was carrying the loan personally. Mr. Jones stated that it is not in default but it is in a workout situation.

Mr. Riddle asked if the group was close to or had a contract to start the building. Mr. Jones stated that they were in fact ready to start construction. Mr. Riddle asked if the group would have a contract in ninety days. Mr. Jones stated that he was in a confidential situation. Mr. Riddle asked if the Council could make a motion contingent upon the receipt of a contract within ninety days. Mrs. Mears stated that the hotel is a major chain. She stated that staff has looked at the agreement and it is a signed letter of intent.

Mr. Riddle stated that he is aware that the Georgetown Hotel and the Comfort Inn are doing okay but that the Brick Hotel is not; however, it is very small.

Mr. Cauley stated that he is aware that DNREC has legislation putting liens directly on property that is in default and he asked if that affects DEDO's liability to do these things in the future. Mrs. Mears stated she was not sure if this affected the Brownfield Reimbursement Program but she would follow up on that concern.

Mr. Lubin stated that since the remediation work has been completed, and if DEDO is willing to waive the requirement of five employees, what type of claw back could DEDO impose on the \$100,000 if there is a 90 day time period. Mrs. Mears stated that the entity that is going to create the jobs, which would be a third party, would be required to create the jobs. Mr. Lubin asked if DEDO would be giving up any leverage if it waived the five jobs requirement. Mrs. Mears stated that the waiver would only apply if the hotel comes to fruition. Director Levin stated that giving up the five jobs gives actually gives DEDO leverage. He added that this aspect can be revisited in ninety days. Mr. Riddle stated that it is his understanding that DEDO will stop its acceleration of default for ninety days pending a contract by Route 113 to build a hotel by someone else on this site. Mr. Lubin suggested a binding sales agreement.

Mrs. Mears stated that the objective is to pull this Project out of collections. She stated that DEDO is not waiving the employment requirement until the hotel is up; until hotel is completed, there will not be a waiver.

Mr. Cauley asked if the Council could get a report in ninety days.

Chairman Lubin asked if there were any public comments; there were none.

**Motion Made By:** Mr. Sears  
**Seconded By:** Mr. Cauley

**TO:** The Council will abate any action as well as DEDO for a ninety day period to allow Route 113 Associates to obtain a legal binding contract for a hotel to be built on the site and any collection of funds for the job creation requirement will be tolled and the date extended through the expectation of the completion of the hotel.

**Approved by Vote of 5 to 0.** Mr. Rowland recused himself from the discussion and voting on this matter.

**Executive Session:** Mr. Riddle made a motion that the Council go into Executive Session pursuant to 29 Del. C. §10004(b) to conduct a strategy session for the purpose of obtaining legal advice or opinion from an attorney-at-law, with respect to pending or potential litigation related to collection issues, which if conducted in an open meeting, would have an adverse effect on the bargaining or litigation position of the Authority, which do not constitute public records within the meaning of 29 *Del. C.*, § 10002(1). The motion was seconded by Mr. Sears which was then adopted by unanimous vote.

Mr. Riddle made a motion that the Council go out of executive session. The motion was seconded by Mr. Sears which was then adopted by unanimous vote.

### **ADJOURNMENT**

The meeting adjourned at 10:05 a.m.

Respectfully submitted,

Lee Porter, Secretary

*LKP*

cc: Members of the Council on Development Finance  
Director Alan Levin

The next CDF meeting is scheduled for Monday, June 24, 2013 at 9:00 A.M. at Buena Vista in New Castle, Delaware.